A

RE SEE JOON SIONG; EX P MAYBAN SECURITIES SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
B [BANKRUPTCY NO: D8-29-2548-2003]
21 OCTOBER 2008

BANKRUPTCY: *Creditor's petition - Presentation of - Officer presenting petition on behalf of judgment creditor company - Whether duly authorised - Bankruptcy Rules 1969, r. 215*

C

This was the judgment debtor's appeal against the decision of the Senior Assistant Registrar dismissing his application to set aside the judgment creditor's petition. The petition presented by the judgment creditor company ('JC company') was signed by its
D officer, one Lau Wan Koon ('LWK') as its duly authorized agent under seal. Despite claiming to be "duly authorized to act for the company under seal", all that LWK was able to show by his affidavit was a resolution of the JC company authorizing him "to affirm affidavits and other legal documents pertaining to trading".
E The issue was whether LWK presenting the petition was authorized to do so.

Held (dismissing the appeal):

F **(1)** Rule 215 of the Bankruptcy Rules 1969 did not state that the requirement of being authorized "under seal" must be adhered to at all costs and that a failure to conform to that requirement would render the petition void. The Court of Appeal case of *UMW Industries Sdn Bhd v Lim Chee Hian* did
G not decide on the issue of whether all bankruptcy petitions presented by a company must in all cases be signed by a duly authorized officer under seal and was therefore distinguished. (para 9)

H **(2)** The resolution did not specify that LWK was authorized to present a bankruptcy petition but modern corporate law recognized the concept of implied authority. The words "pertaining to trading" should be wide enough to include the collection of debt for the JC company by the presentation of bankruptcy. Further, the petition itself required verification of
I the truth of the petition by affidavit by an officer of the JC

company. It could therefore be safely assumed that to achieve the purpose of what he was authorized to do by the resolution of the JC company, it was to be implied that he was authorized to sign the petition. (para 10)

Case(s) referred to:
Datuk Lim Kheng Kim v. Malayan Banking Bhd [1993] 3 CLJ 324 SC ***(refd)***
Re Azrin M Kamaluddin; Ex P Standard Chartered Bank Malaysia Bhd [2007] 5 CLJ 132 HC ***(refd)***
Re Che Ku Rohaida Che Ku Sin; Ex P Public Finance Bhd [2002] 5 CLJ 435 HC ***(refd)***
Re Mat Shah Safuan, ex p United Asian Bank Ltd [1991] 2 MLJ 48 ***(refd)***
UMW Industries (1985) Sdn Bhd v. Lim Chee Hian [2005] 1 CLJ 173 CA ***(refd)***

Legislation referred to:
Bankruptcty Act 1967, s. 133
Bankruptcy Rules 1969, r. 215

For the judgment creditor - YK Kok; M/s Scully Yoon
For the judgment debtor - Anantha Krishnan; M/s Anantha Krishnan

Reported by Usha Thiagarajah

JUDGMENT

Kang Hwee Gee J:

This Is My Oral Judgment

[1] This is an appeal by the judgment debtor against the decision of the senior assistant registrar in dismissing the judgment debtor's application to set aside the creditor's petition.

[2] Mr. Anantha Krishnan For The Judgment Debtor

i. The officer presenting the petition on behalf of the judgment creditor was not duly authorised by the company to present the petition. See exh. "YYSA" in the afidavit tambahan, the relevant portion of which would be Note 3 which reads as follows:

> THAT the Power of Attorney for execution of legal instruments and documents was only granted to the Chief Executive Officer and Executive Director(s) of Mayban Securities.

and Resolution 1:

> THAT authority be and hereby given to Manager, Credit Control, Shahruddin bin Bhari and Assistant Manager, Credit Control, Lau Wan Koon to affirm affidavits and all other legal documents pertaining to trading for and on behalf of Mayban Securities.

It is clear that the petition was signed by Lau Wan Koon who was only authorised to affirm affidavits and other legal documents "pertaining to trading" meaning only restricted to buying and selling. He has no power to present a petition. Now see s. 133 of the Bankruptcy Act 1967 which reads as follows:

> **133. Acts of corporations, firms and mentally disordered persons.**
>
> For all or any of the purposes of this Act:
>
> (a) a corporation may act by any of its officers authorized in that behalf under the seal of the corporation;
>
> (b) a firm may act by any of its members;
>
> (c) a mentally disordered person or lunatic may act by his committee or *curator bonis*.

Now see also r. 215 of the Bankruptcy Rules 1969 which read as follows:

> **215. Officer of corporation, etc.**
>
> Where a corporation presents a petition or takes any other action under this Act, this officer of the corporation may act in his own name, stating that he is such officer duly authorised under seal; but a petition may be presented by the corporation, and signed by the officer on its behalf. Any person chosen by the corporation to act for it as agent, is an "officer" within section 133, and if duly authorised under seal can act for the corporation.

It is clear that the said Mr. Lau Wan Koon needs to be also "duly authorised" under seal to be able to present the petition for the company.

See the case of *UMW Industries (1985) Sdn Bhd v. Lim Chee Hian* [2005] 1 CLJ 173 CA per Mokhtar Sidin, JCA at p. 185:

> In the present appeal, we are of the view that the request is one of the steps to be taken in instituting a bankruptcy proceeding. Without the request, the bankruptcy notice could not be issued. We find that the request is invalid due to lack of authority. Firstly, we find that the request was not made by an officer duly authorized by the appellant nor was it made by the solicitors for the appellant. The request was made by the appellant (a corporation) signed by an unknown person which contravened s. 133 of the Bankruptcy Act and r. 215 of the Bankruptcy Rules.

[3] Miss Y.K. Kok For The Judgment Creditor

i. The extract of the minutes of the board meeting exh. "YYSA" states clearly that Mr. Lau Wan Koon was given the authority to affirm affidavits and all other legal documents pertaining to trading for and on behalf of Mayban Securities. This would include the signing of the application for the bankruptcy notice as well as presentation of the winding-up. See *Re Azrin M Kamaluddin; Ex P Standard Chartered Bank Malaysia Bhd* [2007] 5 CLJ 132.

ii. Section 133 of the Bankruptcy Act 1967 – see *Re Mat Shah bin Safuan, ex p United Asian Bank Ltd* [1991] 2 MLJ 48. There is no provision under the rules to set aside creditor's petition.

[4] Mr. Anantha Krishnan

i. Rule 117 of the Bankruptcy Rules 1969 specifically provides the procedure for setting aside the creditor's petition. This is supported by the Supreme Court case of *Datuk Lim Kheng Kim v. Malayan Banking Bhd* [1993] 3 CLJ 324 at 328 which provides that in order to apply to set aside the creditor's petition the judgment debtor must have filed a notice of intention to oppose as soon as the creditor's petition is served on him together with an application to set aside the creditor's petition supported by an affidavit outlining his grounds. The judgment debtor having complied with the requirements has the right to apply to set aside the creditor's petition.

A ii. *Re Azrin M Kamaluddin; Ex P Standard Chartered Bank Malaysia Bhd, supra*, is to be distinguished. First, the issue was the issuance of the bankruptcy notice and not the setting aside the creditor's petition. Second, r. 215 *supra* was never canvassed before the court.

B iii. The court is generally bound to adopt an interpretation more favourable to the debtor when construing rules under the Bankruptcy Act. See *Re Che Ku Rohaida bte Che Ku Sin; Ex P Public Finance Bhd* [2002] 5 CLJ 435.

C **Findings And Decision**

[5] The crux of the matter here is whether the person presenting the petition is authorised by his company to present the petition.

D **[6]** Under r. 215 a bankruptcy petition may be presented:

(i) By the corporation itself but signed by its duly authorised agent who is to treated as its officer for the purpose of s. 133 and who if so authorised under seal can act on its behalf; or

E

(ii) By an officer of the company acting on his own but stating in the petition that he is duly authorised to do so under seal.

F **[7]** The bankruptcy petition in the instant case appears to have been presented by the company itself and signed by its officer Lau Wan Koon as its duly authorised agent under seal.

[8] Despite claiming to be "duly authorised to act for the company under seal" all that Lau Wan Koon is able to show by his affidavit is a resolution of the petitioner (the company) which authorised him "to affirm affidavits and other legal documents pertaining to trading".

G

[9] But r. 215 does not say that the requirement of being authorised "under seal" must be adhered to at all costs and that a failure to conform to this requirement would render the petition void. The Court of Appeal case of *UMW Industries, supra,* cited by Mr. Anantha Krishnan earlier, did not decide on the issue of whether all bankruptcy petitions presented by a company must in all cases be signed by a duly authorised officer under seal and may therefore be distinguished.

H

I

[10] The crux of the matter here is whether Lau Wan Koon was authorised by the company to sign the petition. It is immaterial whether he was authorised "under seal" or not, so long as he was so authorised. It is true that the resolution did not specify that he is authorised to present a bankruptcy petition but modern corporate law has now developed to the extent that it now recognises the concept of implied authority. The words "pertaining to trading" should be wide enough to include the collection of debt for the company by the presentation of bankruptcy. Further the petition itself requires verification of the truth of the petition by affidavit by an officer of the company. It can therefore be safely assumed that to achieve the purpose of what he was authorised to do by the resolution of the company it is to be implied that he was authorised to sign the petition for the company.

[11] The appeal is dismissed with costs.